

1995

Abdelaziz Aboelseud v. State of Utah : Brief of Appellee

Utah Court of Appeals

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Katherine L. Bernards; Deputy District Attorney; Attorney for Appellee.

Ronald F. Price; Parsons, Davies, Kinghorn and Peters; Attorney for Appellant.

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BUCKET NO. 950374CA

IN THE UTAH COURT OF APPEALS

ABDELAZIZ ABOELSEUD

:

Defendant/Appellant

:

Case No. 950374-CA

vs.

:

Priority 2

STATE OF UTAH,

:

Plaintiff/Appellee

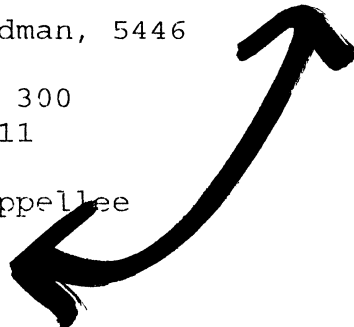
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BRIEF OF APPELLEE

Appeal from A Judgment Of The Third Circuit Court,
State of Utah, Salt Lake County, Salt Lake Department
Honorable T. Patrick Casey, Third Circuit Court Commissioner

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

ABDELAZIZ ABOELSEUD	:	
Defendant/Appellant	:	
vs.	:	Case No. 950374-CA
STATE OF UTAH,	:	Priority 2
Plaintiff/Appellee	:	

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IN THE UTAH COURT OF APPEALS

ABDELAZIZ ABOELSEUD	:	
Defendant/Appellant	:	
vs.	:	Case No. 950374-CA
STATE OF UTAH,	:	Priority 2
Plaintiff/Appellee	:	

BRIEF OF APPELLEE

APPELLATE COURT JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. Section 78-2a-3(d) and 78-2a-3(e).

DETERMINATIVE STATUTES

Utah Code Ann. Section 76-5-108 (as amended May 3, 1993) and Utah Code Ann. Section 30-6-5(5)(a),(6) (as amended May 3, 1993) and Utah Rules of Civil Procedure Rule 4(d) and (e)(1).

Utah Code Ann. Section 76-5-108 (as amended) provides as follows:

Any person who has been restrained from abusing or contacting another or ordered to vacate a dwelling or remain away from the premises of the other's residence, employment, or other place as ordered by the court under a protective order or ex parte protective order issued under Title 30, Chapter 6, or Title 78, Chapter 3a, who violates that order after having been properly served with it, is guilty of a class A misdemeanor.

Utah Code Ann. Section 30-6-5(5)(a),(6) (as amended) provides:

(5) Upon issuance of a protective order, either ex parte or following a hearing, the court clerk shall provide four certified copies to the party protected by that order. The protected party shall keep one certified copy and shall:

(a) cause a certified copy to be served on the party restrained, in accordance with Rule 4 of the Utah Rules of Civil Procedure;

(6) If the defendant has been personally served with the ex parte protective order and notice of the hearing regardless if he appears at the hearing, and the court issues a protective order, the terms of the ex parte protective order shall remain in effect until a certified copy of the protective order is properly served on the defendant.

Utah Rules of Civil Procedure, Rule 4(d), (e)(1) provides as follows:

(d) By whom served. The summons and complaint may be served in this state or any other state or territory of the United States, by the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service, and not a party to the action or a party's attorney.

(e) Personal service. Personal service shall be made as follows:

(1) Upon any individual other than one covered by subparagraphs (2)(3) or (4) below, by delivering a copy of the summons and/or the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and/or the complaint to an agent authorized by appointment or by law to receive service of process.

STATEMENT OF THE CASE

Nature of the Case: This is a criminal action whereby the State asserted that Mr. Aboelseud violated a mutual protective order by placing telephone calls to the residence of Ms. Garcia.

Course of Proceedings and Disposition Below. The State brought two criminal charges against Mr. Aboelseud pursuant to Utah Code Ann. Section 76-5-108, alleging that Mr. Aboelseud violated a mutual protective order (granted in a protective order proceeding commenced by Mr. Aboelseud). At the trial held on April 28, 1995, the State conceded that it did not have a return of service to present to the trial court, due to the fact that Mr. Aboelseud had never been served by a process server delivering a certified copy of the protective order. The State argued that Mr. Aboelseud had received the equivalent of service through notice, in that Mr. Aboelseud had initiated the protective order, had attended the hearing, received copies of said order, and had sought his wife's waiver of service. The trial court found that the requirement of service was met when Mr. Aboelseud and counsel obtained the protective order as a mutual protective order and received a personal copy of it. (Transcript, pg 9).

The State presented it's witnesses, followed by Defense. The court found Mr. Aboelseud guilty of count two of the information, finding that Mr. Aboelseud called Ms. Garcia over the phone on at

least two occasions. The Court dismissed the first count of the information.

On May 30, 1995 Mr. Aboelseud filed his notice of appeal, appealing the conviction on the second count.

STATEMENT OF FACTS

1. Mr. Aboelseud and Ms. Garcia had a relationship for some time. They have two minor children in common. (Transcript pg 17, 29)

2. Mr. Aboelseud and Ms. Garcia had been engaged in litigation regarding the paternity of the children and visitation rights during the effective period of the protective order. (Transcript pg. 29)

3. Mr. Aboelseud and Ms. Garcia had suffered problems with domestic violence which had resulted in charges being filed against both parties prior to the issuance of the protective order. (Transcript pg. 24)

4. In September, 1994, Mr. Aboelseud commenced an action in The Third District Court, State of Utah, seeking a protective order. (Transcript pg. 7)

5. On September 28, 1994, Mr. Aboelseud was present and represented at a hearing held before the Honorable Commissioner Michael S. Evens where a mutual protective order was agreed upon by Mr. Aboelseud and Ms. Garcia and granted by the court. Said protective order was subsequently entered by the Third District Court on October 6, 1994. (State's Exhibit 2).

6. The Protective Order provides that Mr. Aboelseud "is restrained from any contact whatsoever with [Ms. Garcia]." (State's Exhibit 2).

7. Between the dates of October 19, 1994 through October 26, 1994, Mr. Aboelseud repeatedly phoned Ms. Garcia at her parent's home where Ms. Garcia was then residing. (Transcript pg. 22)

8. Ms. Garcia was aware Mr. Aboelseud was the caller. After receiving the first call from Mr. Aboelseud, Ms. Garcia had a caller I.D. box installed on the phone at her parents home. The caller I.D. box displayed Mr. Aboelseud's name and number when he called. Ms. Garcia also recognized Mr. Aboelseud's voice during at least two calls. (Transcript pg. 22)

9. An Information was authorized and presented for filing on November 9, 1994. (Addendum)

10. A trial was held on April 28, 1995. A preliminary issue regarding service was brought to the trial court's attention by the State. The State conceded that it did not have a return of service, due to the fact that Mr. Aboelseud had not been served with a certified copy of the protective order by a process server. Since the protective order had been initiated by Mr. Aboelseud and service had been waived by Ms. Garcia, formal process had not been initiated. The Court found that the requirement of service had been met through other means. (Transcript pg. 9)

11. Ms. Garcia testified regarding the calls she had received from Mr. Aboelseud during the period the restraining order was in effect. (Transcript pgs. 21-24)

12. Ms. Garcia further testified that her father owns a restaurant and works at the restaurant during the day. (Transcript pg. 34)

13. Ms. Garcia testified regarding visitation arrangements. Visitation was being negotiated through Ms. Garcia's attorney and was supervised by Ms. Garcia's mother. (Transcript pg 36-38)

14. Mr. Aboelseud testified in his own behalf. He admitted that he had in fact placed a few telephone calls to the home of Ms. Garcia's parents during the relevant time frame. (Transcript pg. 46)

15. Mr. Aboelseud testified that he was aware that Ms. Garcia was residing at her parent's home during the time in question. (Transcript pg. 46)

16. Mr. Aboelseud testified his purpose for calling Ms. Garcia's parent's home was to speak to Ms. Garcia's father regarding the pending litigation. (Transcript pg. 45)

17 The trial court found Mr. Aboelseud guilty of Count II, Violation of a Protective Order, a Class A Misdemeanor. (Transcript pg. 52)

SUMMARY OF ARGUMENTS

Delivery of a certified copy of a protective order by a process server is not necessary for "proper service" as contemplated in Utah Code Annotated Section 76-5-108. The Utah State Legislature did not intend to make service by a process server an element of the crime of violation of a protective order when they enacted Section 76-5-108. The concern was notice. It would be patently unfair to hold someone criminally liable for violating a protective order they did not know existed.

Service according to Rule 4 of the Utah Rules of Civil Procedure is the requirement. This can be accomplished by means other than a process server. Mr. Aboelseud attended a protective order hearing with representation by an attorney, received copies of the protective order, and obtained Ms. Garcia's waiver of service. Mr. Aboelseud had the equivalent of service of the protective order. He did not waive any rights unknowingly.

The protective order at issue prohibited Mr. Aboelseud from contacting Ms. Garcia. Mr. Aboelseud knew Ms. Garcia was residing at her parent's residence. He was aware that calling the residence may, and most likely would, result in contact with Ms. Garcia. Mr. Aboelseud's claim that he was attempting to contact Ms. Garcia's father in order to get a message to Ms. Garcia is not credible for several reasons, nor is it a defense to the charge. Mr. Aboelseud was not likely to make contact with Mr. Garcia during daytime hours at home, due to the fact that Mr.

Garcia worked at his restaurant during the day. In addition, Mr. Aboelseud could make any necessary contact regarding litigation through Ms. Garcia's attorney and had been instructed to use that method of contact. Even if the court had believed Mr. Aboelseud was attempting to contact Mr. Garcia,¹ Mr. Aboelseud was none the less guilty of intentionally contacting Ms. Garcia through the same act.

The evidence supports the verdict. Mr. Aboelseud intentionally called the Garcia residence,² knowing Ms. Garcia resided there. He performed the act intentionally, knowing the likely outcome (that Ms. Garcia would answer the phone). Later claiming that he planned or hoped for a different outcome, does not diminish the intentional and knowing act.

Consent to the violation of a protective order is not a defense. Ms. Garcia cannot consent to the violation of a court order. Neither does picking up a phone mean that one consents to the call being made.

¹The State is unable to find any language in the transcript supporting a theory that the trial court found that the protective order prohibited contact with Mr. Garcia or that Mr. Aboelseud was guilty of contacting Mr. Garcia.

²The State is unable to find any language in the transcript supporting a theory that the trial court found Mr. Aboelseud guilty of negligent behavior.

ARGUMENT

I. MR. ABOELSEUD WAS "PROPERLY SERVED" AND HAD NOTICE OF A PROTECTIVE ORDER PROHIBITING CONTACT WITH MS. GARCIA.

Utah Code Annotated Section 76-5-108 provides that a person who has been restrained from having contact with another person, pursuant to a protective order issued pursuant to Utah Code Ann. Section 30-6-1, et seq., is guilty of a class A misdemeanor if that person violates the protective order "after having been properly served with it..." The procedure for service of a protective order is addressed in Utah Code Ann. Section 30-6-5(a) which provides that "The protected party...shall: (a) cause a certified copy to be served on the party restrained, in accordance with Rule 4 of the Utah Rules of Civil Procedure.

Rule 4 of the Utah Rules of Civil Procedure provides that personal service may be made "by any person 18 years of age or older at the time of service, not a party to the action..." The Rule further states that service may be made "by delivering a copy of the summons and/or the complaint to the individual personally, or by leaving a copy at the individuals dwelling house or usual place of abode ... or any delivering a copy of the summons and/or the complaint to an agent authorized by appointment or by law to receive service of process."

At trial the state conceded that it did not have a return of service to present to the court. In other words, the defendant had not been served by a process server. This does not mean that the defendant had not been "properly served". The defendant had

sought the protective order. He had attended the protective order hearing and was represented by counsel at that hearing. As the complaining party, defendant had signed the protective order, and Commissioner Evan's court had given copies of the protective order to either Mr. Aboelseud or his counsel. (Transcript pg. 9). As the trial court noted, to require the responding party to turn around and serve the complaining party is a "nonsensical kind of [] requirement." (Transcript pg. 9)

The Court of Appeals in Minnesota addressed a similar problem. In State of Minnesota v. Dumas, 1994 WL 71403 (MINN. APP.) (Not Reported in N.W.2d) Defendant Dumas claimed he did not have proper service because the copy of the protective order he received had not been confirmed and signed by the district court judge as is the typical procedure. The Court of Appeals held that "despite the irregular procedure, the defect as it relates to this proceeding is not jurisdictional." (at page 3).

LEGISLATIVE INTENT

There is no evidence to support the proposition that "properly served" was meant to require a certified copy of a protective order served by a process server. The legislature specifically allowed for service to be accomplished in accordance with Rule 4 of the Utah Rules of Civil Procedure as stated in Utah Code Ann. Section 30-6-5(a).³ Service according to Rule 4

³Utah Code Ann. Section 30-6-5(6) does not buttress a conclusion that any specific formal type of service is required. If anything, a conclusion can be drawn that the legislature's main concern is with allowing a party protection from a protective order despite an opposing party's attempts to thwart the action by non-appearance at a court hearing.

can be accomplished through many different means. The main concern and goal is to make sure an individual has notice of court actions which may effect their rights. Case law has also held that when an individual has notice, service through Rule 4 can be waived.

WAIVER

Aguenda, defendant was not served, his appearance at the protective order hearing coupled with his request for relief waived any right to service. Downey State Bank v. Major-Blakeney Corporation, 545 P2d 507 (Utah 1976); Cline v. City of Boulder, 450 P.2d 335 (Colo 1969), Montano v. Scottsdale Baptist Hospital, 581 P.2d 682 (Ariz. 1978). Defendant was represented at the protective order hearing. His general appearance and request for relief was a knowing waiver of his right to service.

II. THE PROTECTIVE ORDER PROHIBITED MR. ABOELSEUD FROM CONTACTING MS. GARCIA. THE COURT FOUND MR. ABOELSEUD GUILTY OF CONTACTING MS. GARCIA. THE COURT DID NOT PROHIBIT MR. ABOELSEUD FROM CONTACTING MS. GARCIA'S PARENTS.

The protective order prohibits Mr. Aboelseud from contacting Ms. Garcia. The trial court found defendant guilty of calling "a place where he...clearly has reason to know that [] Ms. Garcia is as likely as anybody to pick up the phone, and perhaps the most likely during this time of the day." (Transcript pg. 52)

The Court did not find that Mr. Aboelseud was prohibited from contacting Ms. Garcia's parents. The court merely noted

that Mr. Aboelseud may have had a reason for his call, but "there are other ways of accomplishing that purpose". (Transcript pg. 52).

**III. THE TRIAL COURT FOUND MR. ABOELSEUD
GUILTY OF INTENTIONALLY VIOLATING THE
PROTECTIVE ORDER.**

The State is unable to find any language in the trial court's decision which supports a conclusion that Mr. Aboelseud was found criminally liable for negligent violation of the protective order. Mr. Aboelseud intentionally placed telephone calls to a residence he knew Ms. Garcia resided at.

While the court may have noted Mr. Aboelseud's excuses for his behavior, the trial court also noted that "there are other ways of accomplishing that purpose", and the trial court did not "think that those reasons justify making the contact." (transcript page 52).

**IV. MS. GARCIA DID NOT CONSENT TO CONTACT BY
MR. ABOELSEUD. CONSENT IS NOT A DEFENSE.**

Picking up a telephone call is not consent to contact. One can pick up a phone, knowing who is calling, with many intentions that do not include consent. No evidence was presented to show Ms. Garcia consented to Mr. Aboelseud's telephone contact.

Arguenda Ms. Garcia welcomed the contact, Ms. Garcia cannot consent to violation of a court order. Mr. Aboelseud's telephone calls violated a protective order.

CONCLUSION

For all of the foregoing reasons, the judgment against Abdelaziz Aboelseud should be upheld.

Respectfully submitted,

DATED This 9th day of January, 1995.

DISTRICT ATTORNEY'S OFFICE
231 East 400 South, Suite 300
Salt Lake City, Utah 84111

Katherine L. Bernards-Goodman
DEPUTY DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

I certify that the original and seven (7) copies of the foregoing BRIEF OF APPELLEE were mailed on this 9th day of January, 1996 postage fully prepaid, to the Clerk of the Court, Utah Court of Appeals, 230 South 500 East, Suite 400 Salt Lake City, Utah 84102.

I further certify that two (2) copies of the foregoing BRIEF OF APPELLEE were mailed, postage fully prepaid, on the 9th day of December, 1996 to Ronald F. Price, Attorney for Abelaziz Aboelseud, PARSONS, DAVIES, KINGHORN & PETERS, 185 South State Street, Suite 700, Salt Lake City, Utah 84111

Legal Assistant

ADDENDUM

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Deputy County Attorney
2001 South State Street, S3700
Salt Lake City, Utah 84190-1200
Telephone: (801) 468-3422

IN THE THIRD CIRCUIT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,)	Screened by: M. ATKIN
)	Assigned to: TBA
Plaintiff,)	
)	SUMMONS TO BE ISSUED
vs.)	
ABELAZIZ ABOELSEND 11/02/47,)	I N F O R M A T I O N
OTN)	
Defendant.)	Case No.
)	
)	

The undersigned, DETECTIVE GUY YOSHIKAWA - SALT LAKE CITY POLICE DEPARTMENT, under oath states on information and belief that the defendant committed the crimes of:

COUNT I

VIOLATION OF SPOUSE ABUSE PROTECTION ORDER, a Class A Misdemeanor, at 451 South 200 East, in Salt Lake County, State of Utah, on or about October 17, 1994, in violation of Title 76, Chapter 5, Section 108, Utah Code Annotated 1953, as amended, in that the defendant, ABELAZIZ ABOELSEND, a party to the offense, having been restrained from abusing or contacting another or ordered to vacate a dwelling or remain away from the premises of the other's residence, employment, or other place as ordered by a Protective Order or Ex Parte Protective Order issued pursuant to Title 30, Chapter 6, Section 6, and having been properly served with said order, violated that order.

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County Attorney No. 94011673
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COUNT II

VIOLATION OF SPOUSE ABUSE PROTECTION ORDER, a Class A Misdemeanor, at 1137 North Goodwin Circle, in Salt Lake County, State of Utah, on or about October 19, 1994 through October 26, 1994, in violation of Title 76, Chapter 5, Section 108, Utah Code Annotated 1953, as amended, in that the defendant, ABELAZIZ ABOELSEND, a party to the offense, having been restrained from abusing or contacting another or ordered to vacate a dwelling or remain away from the premises of the other's residence, employment, or other place as ordered by a Protective Order or Ex Parte Protective Order issued pursuant to Title 30, Chapter 6, Section 6, and having been properly served with said order, violated that order.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

Officer Scott Mark, Officer Lyle Keller, Detective Guy Yoshikawa, Stefana Garcia

AGENCY CASE #94-151566

DEFENDANT'S ADDRESS: 721 East Linden Avenue, SLC, Utah 84101
DRIVER'S LICENSE #Unknown

PROBABLE CAUSE STATEMENT:

Affiant, a Detective with the Salt Lake City Police Department, states as follows:

Detective G. Yoshikawa has investigated a domestic violence complaint which occurred on October 17, 1994, at 451 South 200 East, Salt Lake County, Utah. The Detective spoke with Stefana Garcia who stated that during her court appearance in Third Circuit Court, the defendant, Abdelaziz Aboelsend, entered the courtroom twice and had to be escorted out.

Stefana also stated that from October 19, 1994, through October 26, 1994, the defendant telephoned her repeatedly.

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County Attorney No. 94011673
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Stefana was awarded a Protective Order against the defendant on September 28, 1994. The Order specifically restrains the defendant from having any contact with Stefana.

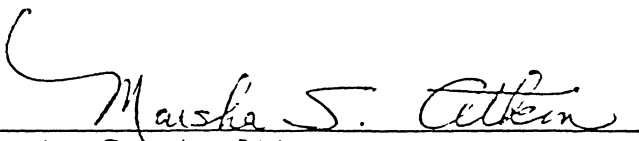
DETECTIVE GUY YOSHIKAWA
Affiant

Subscribed and sworn to before
me this _____ day of November,
1994.

MAGISTRATE

Authorized for presentment and filing:

DAVID E. YOCOM, County Attorney



Deputy County Attorney
November 9, 1994
ch/94011673

CERTIFIED COPY

1

IN THE THIRD CIRCUIT COURT IN AND FOR THE STATE OF UTAH

SALT LAKE CITY DEPARTMENT

-o0o-

STATE OF UTAH,)	
)	
Plaintiff,)	Case No. 941019646
)	
vs.)	<u>TRIAL</u>
)	
ABDELAZIZ ABOELSEUD,)	
)	[Prepared without log
Defendant.)	notes]

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BE IT REMEMBERED that on the 28th day of April, 1995, the above-entitled matter came on for hearing before the Honorable T. Patrick Casey, sitting as Judge in the above-named Court for the purpose of this cause, and that the following proceedings were had.

-o0o-

A P P E A R A N C E S

For the State:	KATHERINE L. BERNARDS-GOODMAN Deputy District Attorney 210 West 10000 South Salt Lake City, Utah 84070
----------------	---

For the Defendant:	RONALD F. PRICE Attorney at Law Parsons, Davies, Kinghorn & Peters 185 South State Street Suite 700 Salt Lake City, Utah 84111
--------------------	--

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* * *

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* * *

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THE COURT: --matter then, are we just about ready to deal with that? Aboelseud?

MS. BERNARDS-GOODMAN: Yes, your Honor.

Well, your Honor, we have a legal issue which may be dispositive of the case, depending on which way it goes, that we maybe ought to address before we get into witnesses.

THE COURT: Why don't you address that, if that's a dispositive issue then?

MS. BERNARDS-GOODMAN: And that's what we were waiting for. The people were gone.

THE COURT: I see.

MS. BERNARDS-GOODMAN: Your Honor, as I'm aware, I'm not quite aware of the exact language, but there is language in the violation of the protective order statute that requires service of the protective order.

This--in this case, this is a protective order that was obtained on the defendant, however; it was served on the victim. It was a mutual protective order, where it was to go both ways.

The State would like to argue and in my experience, limited experience on civil cases, service is generally meant to be notice and sufficient notice satisfies the service

1 requirements.

2 I would argue that the defendant in this case, in
3 seeking this protective order and being present, as the
4 documents would show, in Court when the protective order was
5 discussed and--and I note he is aware of and has copies of,
6 that the State requires four copies to be delivered to the
7 person who seeks the protective order, that he has notice of
8 this protective order and service return--a return of service
9 would not be necessary to satisfy the notice requirements.

10 THE COURT: That's an interesting issue, I suppose.

11 Mr. Price?

12 MR. PRICE: Yes, your Honor. Our position is that
13 the criminal code section refers specifically to Title 30,
14 Chapter 6. And if you look at Title 30, Chapter 6, Sub 5, it
15 gives specific directions as to what type of service is
16 required.

17 It says upon issuance of a protective order, either
18 ex-parte or following a hearing, the Court clerk shall provide
19 four certified copies to the party protected by that order.
20 The protected party shall keep one certified copy and shall,
21 colon, and then Sub (A), cause a certified copy to be served
22 on the party restrained in accordance with Rule 4 of the Utah
23 Rules of Civil Procedure.

24 And our position is, the statute requires service in
25 accordance with Rule 4. The only kind of service which is

1 proper under Rule 4 is personal service, and the statute does
2 not contemplate constructive notice, it contemplates actual
3 personal service in accordance with Rule 4.

4 THE COURT: Well, I just want to explore that a
5 little bit. Being somewhat familiar, having just had a couple
6 of those calendars over the last couple of weeks with the
7 manner in which these protective order are obtained, was the
8 defendant--and this is by proffer we're dealing with this at
9 this point, for purposes of resolving the legal issue, was the
10 defendant--were the defendant and plaintiff both present in
11 the hearing?

12 MR. PRICE: Yes, your Honor.

13 THE COURT: And was the issue of acceptance of
14 service raised with the, I guess defendant in that matter,
15 the--the victim in this case?

16 MR. PRICE: That, I do not know. I do know,
17 however, that--well, excuse me. I take that back. The victim
18 in this case, this defendant, Garcia, she in fact signed
19 acceptance of service--

20 THE COURT: Right.

21 MR. PRICE: --and process.

22 THE COURT: Right.

23 MR. PRICE: She--she signed one and accepted service
24 of the restraining order imposed against her.

25 THE COURT: Uh huh. And that's--that's typically

1 something that's done right in the hearing before the
2 Commissioner that issues the recommendation, that ultimately,
3 generally becomes the protective order.

4 At that point now, was Ms. Raulsen represented by
5 counsel?

6 MR. PRICE: She was, your Honor.

7 THE COURT: And was that you?

8 MR. PRICE: No. That was Patricia Frank.

9 THE COURT: Okay. And did--how long ago was this
10 protective order issued?

11 MS. BERNARDS-GOODMAN: On September--

12 MR. PRICE: The hearing was September 28th.

13 THE COURT: Okay. And was this a stipulated mutual
14 protective order then?

15 It's my understanding it's unusual for mutual
16 protective orders to issue unless the parties stipulate to it.

17 MS. BERNARDS-GOODMAN: Your Honor, both parties were
18 present and--

19 MR. PRICE: They were both--now, as far as the
20 details that occurred there, I don't know, because I haven't
21 been able to speak directly with Ms. Frank.

22 THE COURT: All right.

23 MR. PRICE: My understanding, however, is that Mr.
24 Aboelseud, in this case, was the one who initiated that
25 proceeding. And my understanding is from Mr.--communicating

1 with Mr. Aboelseud again, I have not talked to Ms. Frank, is
2 that they were both very surprised that they ended up with a
3 protective order.

4 So, whether that goes to whether it's stipulated--

5 THE COURT: Okay. That's an issue, as to, I
6 suppose, go to the merits, how--there's some argument on the
7 merits of the protective order, but I'm just--I want to make
8 sure I understand how this came about.

9 MS. BERNARDS-GOODMAN: Your Honor--

10 THE COURT: If Mr. Aboelseud was present in Court,
11 had counsel, Counsel had the defendant sign acceptance of
12 service, Counsel undoubtedly assisted Mr. Aboelseud in
13 getting--is it Aboelseud?

14 MR. PRICE: Yes. It's--the spelling of the last
15 name actually ends in e-u-d, not e-d.

16 THE COURT: E-u-d. Okay.

17 Went and obtained the Judge's signature on the
18 protective order after it was signed off on by the domestic
19 relations commissioner that heard the matter, at least if
20 normal procedure was followed.

21 And that there--I can think of no circumstance under
22 which if the protective order was issued that way, Mr.
23 Aboelseud would have had anybody to serve on him. I mean, she
24 got the protective order served on her by mail, but it was his
25 counsel that facilitated obtaining the protective order as I

1 understand it.

2 I believe, for purposes of the statute, the
3 requirement of service was met when he and counsel obtained
4 the protective order as a mutual protective order in that case
5 because it was recommended by the Judge, and received a
6 personal copy of it at the time.

7 MR. PRICE: If--if I could address that--

8 THE COURT: Okay.

9 MR. PRICE: --briefly, your Honor.

10 I think the--the wording of the statute, I think is
11 critical, and let me hand your Honor a copy of the applicable
12 provision here with the--

13 THE COURT: I understand.

14 MR. PRICE: --highlighted in yellow on the copy.

15 And that--down there in Sub 5(A)--

16 THE COURT: Uh huh.

17 MR. PRICE: --it talks specifically about whether a
18 protective order is issued either ex-parte or following a
19 hearing.

20 THE COURT: Uh huh.

21 MR. PRICE: And the statute contemplates a hearing
22 and I think the way it typically happens is, the parties are
23 present once they get to this point; where Ms. Garcia had been
24 served with an ex-parte protective order and the hearing then
25 was held on September 28th.

1 And I think the language referring to a hearing in
2 the statute would be superfluous if constructive notice was
3 sufficient. I don't think there's any other--I think that the
4 fact that the statute contemplates a hearing and service
5 following the hearing, I think is critical.

6 THE COURT: Well--

7 MS. BERNARDS-GOODMAN: And your Honor, if I could
8 respond.

9 THE COURT: Just a moment, though.

10 The defendant in this case, the plaintiff in the
11 protective order proceeding, is the one who had to serve it
12 and the statute requires him to serve it 'cause he's the one
13 that took the initiative to get it, and the fact that it also
14 restrains him didn't--doesn't impose upon the other party, the
15 responding party, to turn around and serve it back on him.
16 That seems to me to be nonsensical kind of--kind of
17 requirement.

18 MR. PRICE: And if--and if I could address that
19 briefly, your Honor.

20 THE COURT: Okay.

21 MR. PRICE: The statute Sub 5 is not talking in
22 terms of, if the plaintiff obtains a protective order. It's
23 talking in terms of following issuance of a protective order,
24 any protective order, the--and then it says, the party--

25 THE COURT: Uh huh.

1 MR. PRICE: --provides certified copies to the party
2 protected by that order. And then the protected party and in
3 this case, we have two protected parties, and I think both
4 protected parties have to comply with the procedure set forth
5 in the statute.

6 Now, it's not as if Ms. Garcia had no access to
7 counsel in connection with any of these matters. There is a
8 pending somewhat related domestic relations matter, paternity
9 action, where she's been represented by counsel for well over
10 a year. And granted, Ms.--or counsel in that matter, Ms.
11 Marelius, was not present at this particular hearing or
12 proceeding; but again, Ms. Garcia is a protected party and
13 under the terms of the statute, any protected party has to
14 comply with the service procedures.

15 THE COURT: Ms. Bernards-Goodman?

16 MS. BERNARDS-GOODMAN: Well, your Honor, I think if
17 we're going to talk about what's supposed to be done in this
18 statute, we need to talk about legislative intent. It's the
19 legislators' intent here that both parties are aware of what's
20 going on so somebody doesn't go out and contact somebody,
21 unaware that there's a protective order.

22 I--I think it flies in the face of reason that a
23 person who goes out and seeks a protective order doesn't have
24 notice that it's there in the first place, and second, if then
25 violates it, should be precluded from being prosecuted by

1 claiming it hasn't been served upon them when they have the
2 notice.

3 And I don't think that's noticed in Section--or
4 mentioned in Section 76-5-108.

5 THE COURT: Okay. Anything else?

6 MR. PRICE: Just to respond briefly to the
7 legislative intent argument. I think the Utah law is clear
8 when interpreting the statute, you have to start with the
9 plain language of the statute, and you have to reconcile all
10 of the words that are used in the statute before you even go--
11 before you take any further steps, and I think the plain
12 language of the statute is clear with respect to issuance of
13 any protective order and that any party that's protected has
14 to comply with the service procedures.

15 THE COURT: It is my view, regardless of what might
16 have happened in--in other circumstances, that in proceeding
17 by obtaining a waiver of service or an acceptance of service
18 by mail from the defendant in that case, that the plaintiff in
19 that case, the defendant in this case, is precluded from
20 raising the issue of service or failure to obtain service as a
21 defense to this proceeding. Clearly, under the terms of the
22 protective order, the defendant would have been restrained
23 from the conduct.

24 It's not a question of not knowing that the conduct
25 was prohibited. It's a matter of trying to use a claimed

1 defect in service to avoid the consequences of violating the
2 order and I--I believe that it is a fair reading of the
3 statute and of the intent of the statute that in obtaining the
4 protective order, particularly at least in this case, where
5 the plaintiff obtained in that--plaintiff in that case, I'm--
6 have to keep the--where Mr. Aboelseud obtained a--an
7 acceptance of service and therefore, essentially a waiver of
8 the service requirements in this case, that he cannot turn
9 around and say, but I didn't waive it and--and I have a right
10 to require that she serve it on me.

11 Therefore, it would be my ruling in this that that
12 requirement would not preclude prosecution for this offense.

13 MR. PRICE: And if I could just make one last point
14 for the record, your Honor. I think it's our position that
15 the requirement of proper service is not strictly a defense to
16 the charge, but is in fact an element of the prosecution to
17 prima facie case and I don't think--the fact that Title 78--or
18 Title 76, excuse me, specifically refers to proper service, I
19 don't think constructive service constitutes proper service
20 and therefore I don't think they can meet the elements of
21 their case.

22 THE COURT: All right. And you can reserve that
23 argument, certainly, for purposes of any appeal, but that
24 doesn't change my ruling in this case.

25 Now, did you want to proceed with a trial in this

1 matter?

2 MS. BERNARDS-GOODMAN: Yes.

3 THE COURT: Is there an issue--are there issues that
4 need to be tried. I mean, I'm happy to hear the evidence, I
5 just--

6 MS. BERNARDS-GOODMAN: I--on whether or not contact
7 was made? I think--

8 MR. PRICE: I think there are disputed issues of
9 fact.

10 THE COURT: Okay.

11 MR. PRICE: I think there are a variety of them.

12 THE COURT: All right. Is there--now, did Ms.
13 Alvarez come up? When she comes up--

14 UNIDENTIFIED SPEAKER: I haven't been able to phone
15 (inaudible)

16 THE COURT: Okay. Well, when--we may need to
17 interrupt the trial briefly when our Spanish interpreter comes
18 up, but let's proceed with the trial--oh, there she is, pardon
19 me.

20 (Whereupon, the Court handled an unrelated matter.)

21 THE COURT: Okay. Returning then to the matter of
22 State of Utah vs. Abdelaziz Aboelseud.

23 MS. BERNARDS-GOODMAN: His attorney's outside. I'll
24 find him.

25 THE COURT: Whoops.

1 This is our Case No. 941019646. This is the time
2 set for a bench trial on charges, two counts of violation of a
3 spouse abuse protective order.

4 Do you waive a formal reading of the Information?

5 MR. PRICE: Yes, your Honor.

6 THE COURT: Okay. These--just in summary, it's
7 alleged the defendant committed these two offenses at 451
8 South Second East in Salt Lake County, State of Utah, on or
9 about October 17th of 1994, and 1137 North Goodwin Circle in
10 Salt Lake County, State of Utah, on or about October 19th
11 through October 26th of 1994.

12 Do you have several witnesses, Ms. Bernards-Goodman?

13 MS. BERNARDS-GOODMAN: Yes, your Honor. We have
14 three witnesses.

15 THE COURT: Did you wish to invoke the exclusionary
16 rule, Mr. Price?

17 MR. PRICE: Yes, your Honor. We would.

18 THE COURT: Okay. Would you ask the three witnesses
19 to step up then? We'll have them sworn in and--

20 (Whereupon, the Court handled an unrelated matter.)

21 (Whereupon, the prospective witnesses were duly
22 sworn by the clerk of the Court.)

23 THE COURT: All right. Why don't you, since we have
24 four witnesses here, each of you state your name so we have a
25 record that you were sworn in?

1 MS. MARELIUS: Suzanne Marelius.

2 MS. WARD: Virginia Ward.

3 MR. THOMAS: Anthony Thomas.

4 MS. GARCIA: Stephana Garcia.

5 THE COURT: All right. Who's your first witness,
6 Ms. Bernards-Goodman?

7 MS. BERNARDS-GOODMAN: Stephana Garcia.

8 THE COURT: Okay. The other three of you then
9 should step outside while the matter is pending, and you're
10 not to discuss your testimony with one another.

11 Ms. Garcia, you may take the stand.

12 STEPHANA JOANN GARCIA,
13 called as a witness by and on behalf of the State in this
14 matter, after having been previously duly sworn, was examined
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BERNARDS-GOODMAN:

18 Q Would you state your name for the record, please?

19 A Stephana Joann Garcia.

20 Q Ms. Garcia, back in September or October of 1994,
21 where were you living?

22 A 1137 Goodwin Circle in Salt Lake.

23 MS. BERNARDS-GOODMAN: If I could approach, your
24 Honor, I'd like to--

25 Q (By Ms. Bernards-Goodman) Well, first let me ask

1 you, were you once married to Abdelaziz?

2 A No, I wasn't. I was never married to him.

3 Q What was your relationship with him?

4 A Boyfriend-girlfriend.

5 Q And how long did that relationship go on?

6 A About five years.

7 Q When did it terminate?

8 A May of '94.

9 Q Do you recognize the documents I've placed in your
10 hand?

11 A Yes. I do.

12 Q And what are those documents?

13 A This one is for--to appear in Court on September
14 28th. I--I don't recognize this one, I don't think I received
15 one like that.

16 Q Okay. Do you recognize these--

17 MR. PRICE: Your Honor, if I could see the documents
18 that are being referred to?

19 THE COURT: Yes.

20 THE WITNESS: Okay. I recognize this.

21 THE COURT: Why don't you sort out what you do and
22 do not recognize, first of all, and then--

23 THE WITNESS: Oh, okay.

24 THE COURT: --Ms. Bernards-Goodman, you can just--

25 THE WITNESS: This one, I don't. I don't remember

1 seeing this, I never got that one in the mail. I did receive
2 this in the mail from Legal Aid Society. And I remember
3 signing this one in Court.

4 Q (By Ms. Bernards-Goodman) And you're referring to
5 the acceptance of service?

6 A Right.

7 THE COURT: All right. So, why don't you--

8 THE WITNESS: And I've received that--a copy of that
9 in the mail, too.

10 THE COURT: --show those to Mr. Price and then have
11 them marked.

12 Q (By Ms. Bernards-Goodman) The papers that you
13 looked at are--

14 THE COURT: Why--why don't you wait and after he's
15 done looking at them, you can get them marked and then we can
16 know what we're referring to and--unless you don't intend to
17 offer them as exhibits.

18 MS. BERNARDS-GOODMAN: Have these moved as State's
19 Exhibits 1, 2 and 3; 1 being the ex-parte protective order;
20 the second being the protective order; and the third being
21 acceptance of service.

22 Also move to have the minute entry marked as Exhibit
23 4.

24 THE COURT: All right. You've had them marked.

25 Q (By Ms. Bernards-Goodman) Do you recall going to

1 Court in September on this protective order?

2 A Yes. I do.

3 Q So, you were aware it was in effect?

4 A Yes. I was.

5 Q And was the defendant--or was--I'm having a hard
6 time with this name--Abdelaziz; was he in Court with you?

7 A Yes. He was.

8 Q And do you recall what date that protective order
9 was granted?

10 A The 28th.

11 Q Of September?

12 A Of Octo--of, yeah, September--or no, it was in
13 October--no. No, no, it was in September.

14 Q Go ahead and look at it and refresh your memory.

15 A It was in September when we went to Court. We was
16 at--when we went to Court in September.

17 Q In October, do you recall going to Court for
18 yourself?

19 A Yes. I do.

20 Q And when you went to Court, did you notice anything
21 unusual there?

22 A Yes.

23 Q And what was that?

24 A Aziz showed up.

25 Q All right. Where were you and where was he when

1 this happened?

2 A I was in the courtroom and he came into the
3 courtroom and sat down, too.

4 Q And were you sitting in the back of the courtroom at
5 that point?

6 A Yes, I was. I was sitting in the back, very back
7 row and he came and sat in the row not--a couple rows ahead of
8 me.

9 Q Did you look at him?

10 A I saw him, yes.

11 Q Did you see him look at you?

12 A Yes. He checked to see if I was there and that's
13 when he came in--

14 Q How do you know he checked to see if you were there?

15 A Because when he came to the door, he looked in and I
16 was looking outside, waiting for my attorney, I was looking
17 for her to show up, and then he came in, he--he entered the
18 courtroom.

19 Q Besides looking at each other, did you have any
20 other contact with him in the courtroom?

21 A No. I didn't talk to him. When he got up and he
22 walked out of the courtroom, I went to Virginia and I told her
23 that Aziz is here and I have a protective order, he's not
24 supposed to be here.

25 Q Okay. You said he walked out at that point?

1 A He walked out and he came back in again and then he
2 walked out again and then at that time, she had--she says,
3 well, I'll go get a bailiff to get him out of here. She did
4 know that I had a--the protective order with me. I said--and
5 she said, 'cause she would have had him arrested at that time.
6 She thought that I didn't have it--

7 Q So, did the bailiff come back that you could see?

8 A Yeah. He was--they were talking just outside the
9 door and you could see the little window, you could see them
10 talking, just outside the door.

11 Q And did--and you call him Aziz?

12 A Yes.

13 Q Did he leave at that point?

14 A Yes. He left after--I never saw him after that.

15 Q Have you had other contact with him?

16 A He calls the house.

17 Q Do you remember--

18 A He's been calling the house--he--

19 Q Was that before or after this Court date?

20 A He started calling, after. He called that afternoon
21 and at that time, we didn't have Caller I.D. He called that
22 after--'cause I could tell, 'cause he hung up as soon as I
23 picked up the phone, he hung it up.

24 Q When did you get the Caller I.D.?

25 A We got it like on the 18th, the day after the--the

1 Court, and then--

2 Q So, did you notice him calling again?

3 A Yeah. He'd call and then his name would show up and
4 I wouldn't say any--I--I'd pick up the phone, and he wouldn't
5 say--I didn't say anything, and then he would say hello and
6 then I'd hang it up.

7 Q Did you reco--recognize the voice?

8 A Yes. And one time, he said hello, another date--and
9 he'll--only called once, would only call once, and then
10 another time, he called, and he said, "Stephanie", and then I
11 just hung it up.

12 Q So, how many times, total, did he call? When you
13 say he only called once--

14 A It was like four times. He called once on, like the
15 19th, once on the 20th, once on the 21st, and then it skipped
16 a couple days, something like that. I'm not positive exactly.
17 I know that it started on the 19th with the phone calls that--
18 that--it was him, because it would show up on the Caller I.D.

19 Q The 19th of what?

20 A Of October.

21 Q 1994?

22 A 1994, yes.

23 Q Did you ever say anything to him when he called?

24 A No. No. No, 'cause I could see that it was him and
25 I didn't want to say anything. I didn't want to start a

1 conversation of any type. I would just pick it up and he
2 would say like "hello", or, you know, questioning, "Hello?"
3 Like, is anybody there, and then I'd just hang it up. And
4 this would--generally occurred in the af--in the morning, I
5 think there was a couple calls in the afternoon.

6 MR. PRICE: I'm going to object to the testimony at
7 this point. I don't think it's responsive to any question
8 that was asked.

9 THE COURT: That's fine. Let's proceed as much as
10 possible by question and answer.

11 Q (By Ms. Bernards-Goodman) What is the most you
12 remember being said?

13 A "Hello", or one word, "Stephanie".

14 Q And did you recognize his voice--

15 A Yes. I did.

16 Q --on each of these occasions?

17 A Yes.

18 Q Has there been any other contact besides the Court
19 and the telephone calls?

20 A During the protective order, no, they stopped.

21 Q The protective order is no longer in effect?

22 A The protective order is no longer in effect, but now
23 he's starting to harass me at work.

24 Q Looking at the protective order, how long ago did it
25 run?

1 A I think it ended at the end of January, like the
2 28th or the 26th of January of '95.

3 MS. BERNARDS-GOODMAN: No further questions.

4 CROSS-EXAMINATION

5 BY MR. PRICE:

6 Q Ms. Garcia, you testified that you were in Court for
7 yourself on October 17; is that correct?

8 A Yes.

9 Q When you say you were in Court for yourself, why
10 were you in Court?

11 MS. BERNARDS-GOODMAN: Your Honor, I'd object. I
12 don't know the relevance of that.

13 THE COURT: I think it's relevant. I'm curious as
14 to why she was here. I'll overrule the objection.

15 THE WITNESS: It was regarding a citation I
16 received.

17 Q (By Mr. Price) And what was the nature of that
18 citation?

19 A Spousal abuse.

20 Q And who was the victim on that citation?

21 A Both of us were. We were both cited.

22 Q With respect--okay. With respect to the reason you
23 were in Court, who was the victim, the day you were in Court?
24 Who was the victim?

25 A Who was the victim? He was.

1 Q And when you say "he", you're referring to Mr.
2 Aboelseud?

3 A Aziz was the victim.

4 And I'd also like to say, I changed--

5 Q And--

6 AA --my court date purposely, not to have it at the
7 same time as he did. His was two weeks prior to that and the
8 police had had it on there that we would both go in at the
9 same time, and I had called and talked to the clerk and
10 requested a delay on mine so that there would be no contact
11 whatsoever. So, mine was postponed two weeks.

12 MR. PRICE: I move to strike the last statement.
13 There's no question pending.

14 THE COURT: Well, we'll strike it. If Ms. Bernards-
15 Goodman wants to ask a question about that, she can.

16 Q (By Mr. Price) Now, you say that the reason--the
17 purpose for the citation was a spousal abuse; is that correct?

18 A Uh huh.

19 THE COURT: I'm sorry. I didn't hear your answer.

20 THE WITNESS: Yes.

21 Q (By Mr. Price) What was the disposition of that
22 citation?

23 A What do you mean, what was the disposition?

24 Q I mean, did you have a trial? Did you plead guilty?

25 A No. We--we pleaded--we bargained.

1 Q You pleaded guilty to the citation?

2 A Right.

3 Q And you testified that you reside at 1137 Goodwin
4 Circle; is that correct?

5 A That's correct.

6 Q Do you live there alone?

7 A No.

8 Q Who lives there with you?

9 A My parents and my two kids.

10 Q And is that your home or is that your parents' home?

11 A That's my parents' home.

12 Q How old are you children?

13 A Four and--

14 MS. BERNARDS-GOODMAN: Your Honor, I don't know what
15 relevance the ages of the children have to this.

16 MR. PRICE: Well, the relevance goes to whether one
17 is old enough to speak with his--with his father on the
18 telephone--father on the telephone.

19 THE COURT: Overruled.

20 Q (By Mr. Price) How old are the children?

21 A Four and 20 months right now.

22 Q And is your four-year-old able to talk?

23 A Yes.

24 Q Does she talk on the phone on occasion?

25 A You have to beg her to.

1 Q But she does--she's at least able to communicate
2 over the phone?

3 A Right.

4 Q And is that your parents' home where you reside?

5 A Yes. It is.

6 Q And do your parents know Mr. Aboelseud?

7 A Yes. They know him.

8 Q In fact, Mr. Aboelseud is the father of your two
9 children; is that correct?

10 A That's correct.

11 At this time, paternity was not--

12 THE COURT: Wait--wait until he asks a question
13 before you respond.

14 THE WITNESS: Okay.

15 Q (By Mr. Price) I just want to be clear on your
16 testimony with respect to your Court appearance on October
17 17th. You testified that you never spoke with Mr. Aboelseud
18 on that occasion?

19 A No. I didn't.

20 Q And he never spoke to you, did he?

21 A No. He didn't speak to me.

22 Q Now, when--the first phone call you claim came from
23 Mr. Aboelseud after the protective order came--was in force,
24 what date was that on?

25 A The first time that he called was that afternoon

1 after the Court date, but there was no Caller I.D. to prove
2 that he called.

3 Q Okay. And then--

4 A The first time that it showed up on the Caller I.D.
5 was October 19th.

6 Q And this Caller I.D., you say it shows his name on
7 it?

8 A Shows his name and his phone number.

9 Q And is that the Caller I.D. located right next to
10 the telephone?

11 A Yes. It is.

12 Q So that when--or prior to picking up the telephone,
13 you can see who's on the other line?

14 A Right.

15 Q So, before you ever picked up the telephone and on
16 any of these phone calls that occurred after Caller I.D., when
17 you claim Mr. Aboelseud called, you knew, before picking up
18 the telephone that Mr. Aboelseud was on the other line;
19 correct?

20 A Right.

21 Q And yet you still picked up the phone?

22 A I picked up the phone, yes.

23 Q Now, this protective order that's issued today is a
24 mutual protective order, is it not?

25 A Right. The one that was issued at that time, yes.

1 Q Do you know whether there's a--whether you were a
2 defendant in a paternity action with Mr. Aboelseud?

3 A No. I don't know.

4 QQ Well, do you know whether you have--let me ask you
5 this: Have you ever denied that your two children were Mr.
6 Aboelseud's children?

7 A We denied one of them. At that time, at the time of
8 this protective order, that wasn't--the paternity was not
9 established on the four-year-old, the one that is able to
10 talk.

11 Q And did Mr. Aboelseud commence a lawsuit to
12 determine--have him declared the father of that child?

13 A Yeah, we told him he needed to prove that it was so.

14 Q And so you were a defendant in that lawsuit, are you
15 not?

16 A Am I a defendant? I'm not sure if I'm the
17 defendant or the plaintiff. I'm not--

18 Q Okay. But there is a lawsuit pending concerning
19 whether the four-year-old is Mr. Aboelseud's?

20 A There was.

21 Q In connection with that lawsuit, did you ever have a
22 blood test--

23 AA Yes.

24 Q --to decide if the child is Mr. Aboelseud's?

25 A Yes. There was a blood test done.

1 Q And when was that blood test taken?

2 A It was like in November or December.

3 Q Of which year?

4 A Of '94.

5 Q '94? And did you go in voluntarily for that blood
6 test or was it actually ordered by the Court?

7 A We went in on an order by the Court because I
8 refused to pay for the blood test.

9 Q Do you recall when it was the Court first ruled that
10 you had to go in for a blood test?

11 A No, I don't recall.

12 Q How long before you actually went in?

13 A I don't recall.

14 THE COURT: Well, I'm not sure I know the relevancy
15 of all of this.

16 MR. PRICE: Okay. Well, and I hope to get to that
17 real briefly. The relevance, your Honor, will be that to the
18 extent any phone calls occurred, the only purpose was to have
19 Ms. Garcia's parents get her to go in for the blood test that
20 had been ordered by the Court ten months previously.

21 THE COURT: It seems--well, okay.

22 MR. PRICE: If I may approach the witness, your
23 Honor?

24 THE COURT: Yes. You may.

25 Q (By Mr. Price) Let me have you look at that

1 document and tell me if you recognize it, if you've seen it
2 before?

3 A I've seen something similar. I can't say that this
4 is the exact one.

5 Q Okay.

6 A Okay.

7 Q Does that document have a date on it?

8 A 12-29-93.

9 Q And could you read the--the paragraph down towards
10 the middle part of the document where it starts, "The
11 Court's"?

12 A The Court's ruling on notice to submit for decision
13 is to-wit: Plaintiff motion for order requiring blood test is
14 granted.

15 MR. PRICE: If I could have this marked as Defense
16 Exhibit 1. And move to have it admitted into evidence.

17 THE COURT: Any objection, Ms. Bernards-Goodman?

18 MS. BERNARDS-GOODMAN: No.

19 THE COURT: Defense Exhibit 1 will be admitted into
20 evidence.

21 Q (By Mr. Price) Now, you testified that ultimately
22 you went in for the blood test in about November of '94--

23 A Yes.

24 Q --is that correct?

25 Do you know whether your father has ever spoken with

1 Mr. Aboelseud on the telephone at his home?

2 A I know that he has in the past five years, yes.

3 Q So, it's not unusual for Mr. Aboelseud and your
4 father--

5 A It is unusual.

6 Q Well--

7 A It is unusual, because my father does not want to
8 even talk to the guy, okay?

9 Q Okay. But, you need to let me finish my question,
10 please.

11 It, at least occurs on occasion that your father
12 speaks to Mr. Aboelseud over the telephone?

13 A No, not now.

14 Q But it--it has happened in the past?

15 A In the past five years, yes, it has happened.

16 Q Now, you testified that you never said anything when
17 you picked up the phone when Mr. Aboelseud called; is that
18 correct?

19 A No.

20 Q And the only thing that he said was hello; is that
21 correct?

22 A Hello, and he said Stephanie.

23 Q Let me have you look at this document, Ms. Garcia,
24 and tell me if you've seen this document before.

25 A I haven't seen this document before--

1 Q Okay.

2 A --but--

3 Q Do you recall filing a--filing a report with the
4 police on about October 27, '94, about these phone calls that
5 you claim occurred?

6 A I called before that.

7 Q Okay. Did--do you know whether you made a phone
8 call on about October 27, '94?

9 A I don't recall October 27th, but I had to keep
10 following up on it.

11 Q Now, what I'd like to do is see if--simply if this
12 document refreshes your recollection at all, simply as to what
13 occurred with respect to these phone calls that you claim
14 occurred. Isn't it true, Ms. Garcia, that when you reported
15 these phone calls to the police that you told them that the
16 only thing Mr. Aboelseud said was "hello"? In fact, isn't
17 that what the police report indicates you told the police?

18 A Uh huh.

19 Q You said uh huh; was that a yes?

20 A Yes. That's what I told the police. That's what
21 happened.

22 Q You don't know, do you, Ms. Garcia, whether these
23 phone calls were intended to be directed to you or to your
24 father, do you?

25 A My father wasn't there during the day.

1 Q But he lives there?

2 A He doesn't--

3 Q But he--he resides at the house?

4 A He lives there, but he--he works during the day.

5 Q But he lives there?

6 A And Mr. Aboelseud is aware that he works during the
7 day and he was aware of his work phone number, he could have
8 called him at work. He didn't have to call the house.

9 Q Okay. You need to let me finish my question, ma'am.
10 Your father lives at the house; correct?

11 A Correct.

12 Q Okay. And where does your father work?

13 A At La Sierra Restaurant.

14 Q And what are the hours of that restaurant?

15 A The hours of the restaurant are from 11:00 to 2:30
16 and from 4:30--or 5:00 o'clock to 9:30. His hours are from
17 8:30 in the morning--

18 Q You answered my question.

19 A Okay.

20 Q And you don't know, do you, whether Mr. Aboelseud
21 placed any telephone calls to the restaurant prior to calling--
22 -allegedly calling the home, do you?

23 A I'm not aware of them. I couldn't tell you the date
24 or time if he called the restaurant.

25 Q The phone at the house where you reside, is that

1 registered in your name or your father's name?

2 A My father's and my mother's.

3 MR. PRICE: Could I have just a minute, your Honor?

4 THE COURT: Ms. Garcia, would you hand me Defense
5 Exhibit 1? The other ones I haven't had admitted yet, so I
6 can't read them, but--

7 MR. PRICE: I have nothing further, your Honor.

8 THE COURT: Ms. Bernards-Goodman, anything else?

9 MS. BERNARDS-GOODMAN: Yes.

10 REDIRECT EXAMINATION

11 BY MS. BERNARDS-GOODMAN:

12 Q Have you called the police on other occasions
13 besides the 24th?

14 A The 24th of what?

15 Q Of October.

16 A Yes. We've had to call the police in the past five
17 years. My parents--

18 Q How about in October, about those phone calls?

19 A I had to call--I called almost every day that he
20 called, and I called it in. I called in the police.

21 Q So, there were different phone calls, different
22 things said?

23 A No, no, no, no. I'm saying, every time he called, I
24 would call the police after. Like, if he called on the 19th,
25 I called the police after the incident occurred, or on the

1 20th, I called the police after--I called after--

2 Q On each occasion, did you report--

3 A Yeah, most of the--

4 Q --what was said?

5 A Yes.

6 Q Did you ever hear the defendant hang up?

7 A No.

8 Q Your Court date in October, do you remember what
9 type of hearing that was? Was it a trial or a pre-trial or
10 arraignment?

11 A Pre-trial.

12 Q Pre-trial? So, it wasn't--

13 A That was my understanding. It was--yeah, it was not
14 a trial.

15 Q Okay.

16 AA It was to determine whether I was going to go to
17 trial.

18 Q Okay. Do you have a visitation arrangements with--

19 A Yes, we do. I do have visitation for the children.

20 Q And how do you facilitate the children being seen?

21 A They're supervised by somebody, by my mother.

22 Q Do you drop them off somewhere or what?

23 A No. My mother takes them to the--the place of
24 visitation and he visits there.

25 Q Has he been having his visitation?

1 A Yes.

2 MR. PRICE: I'm going to, at this time, object to
3 this line of questioning. Visitation was occurring on April
4 28th, in this time frame, that's completely irrelevant to the
5 charges.

6 MS. BERNARDS-GOODMAN: Well, your Honor, perhaps I
7 can make it in the October arena. He's alleged that he's
8 calling up to speak to his children. I--I don't think that's
9 necessary if he's got visitation going.

10 THE COURT: You can ask about that time frame. I'll
11 sustain the objection with respect to anything that's going on
12 currently.

13 Q (By Ms. Bernards-Goodman) Was there visitation in
14 October?

15 A No. Paternity was not settled in October.

16 Q Does your four-year-old normally answer your phone?

17 A No.

18 Q Do you have counsel?

19 A Yes.

20 Q How long have you had her?

21 A Like three years, four years now.

22 Q What's her name?

23 A Suzanne Marelius.

24 Q Has she represented you through your Court matter
25 that you came to Court on in October?

1 A Yes. She did.

2 Q Has she been representing you in anything else?

3 A Yes.

4 Q In your visitation and custody problems?

5 A Correct.

6 Q Was she representing you back in October?

7 A Yes.

8 Q And do you recognize Aziz Aboelseud in the courtroom
9 today?

10 A Yes. I do.

11 Q Would you point him out for us?

12 A It's the gentleman in the blue suit.

13 MS. BERNARDS-GOODMAN: Thank you.

14 THE COURT: Mr. Price?

15 RECROSS-EXAMINATION

16 BY MR. PRICE:

17 Q It's your testimony that you weren't allowing any
18 visitation with the children in October; is that correct?

19 A No, there was no arrangements made.

20 Q And that was because paternity hadn't been
21 established; is that your testimony?

22 A Right. Paternity hadn't been established.

23 Q But you've never disputed that your youngest child
24 is Mr. Aboelseud's child; correct?

25 A Correct. He could have contacted my attorney.

1 Q Now--

2 A He didn't have to call me.

3 Q Now, has Ms. Marelius ever indicated to you that she
4 has difficulty getting ahold of you?

5 A No.

6 Q Never told you that?

7 A No.

8 Q And you always return every phone call she makes to
9 you?

10 A If somebody takes a message, yes, I'll return her
11 phone calls. If I'm there--

12 Q But--

13 A If I'm there, if I'm available, I return her phone
14 calls.

15 Q Isn't it true that Ms. Marelius has had a difficult
16 time communicating with you in the course of that paternity
17 action?

18 A What is a difficult time? What do you mean, she's
19 had a difficult time? I receive her letters, I respond.

20 Q How long does it take you to respond?

21 A Usually respond within a week.

22 Q So, may--at least take a whole week before you
23 respond to a letter or a phone call?

24 A Correct.

25 Q Do you know whether Mr. Aboelseud was represented by

1 counsel in the paternity action back then?

2 A Yes. He was. He had a--

3 Q In October of '94, he was?

4 A I'm not sure about October, but he--when he
5 initiated this the very first time, he had some gentleman,
6 Greg Kurl or something like that.

7 Q Okay. What I want to know is, in October of '94, do
8 you know whether he was--

9 A I don't know.

10 MR. PRICE: Nothing further.

11 THE COURT: Anything else, Ms. Bernards-Goodman?

12 MS. BERNARDS-GOODMAN: No.

13 THE COURT: Thank you, Ms. Garcia. You can step
14 down.

15 THE WITNESS: Do I just leave these here or what?

16 THE COURT: Just leave them there. They're not in
17 evidence, yet.

18 And we'll ask you to step outside while the--

19 THE WITNESS: Okay.

20 THE COURT: --other witnesses testify.

21 I have a question with respect to two of your
22 witnesses, the prosecutor and the bailiff. Are they anything
23 more than cumulative as to the fact that Mr. Aboelseud was
24 here?

25 MS. BERNARDS-GOODMAN: Your Honor, the bailiff isn't

1 my witness.

2 THE COURT: Well, all right.

3 MS. BERNARDS-GOODMAN: Ms. Ward, I was--or she had
4 contact with the defendant about this hearing, as well as I
5 was going to ask her what type of hearing and whether the
6 defendant was subpoenaed for that hearing.

7 THE COURT: Well, you don't claim that he was
8 subpoenaed, do you?

9 MR. PRICE: No. No, not at all.

10 THE COURT: Stipulate to that? I just, in the
11 interest--we've got another case to hear as well, and in the
12 interest of--of not spending time on unnecessary things, is it
13 necessary to call Ms. Ward to establish anything with respect
14 to this?

15 MS. BERNARDS-GOODMAN: Just that she was in the
16 courtroom that day also.

17 MR. PRICE: With respect to--in answer to your
18 question with respect to the bailiff with respect to our case,
19 his testimony simply would be in essence to the fact that he
20 was the bailiff involved on that day, that came up to Mr.
21 Aboelseud in the court building, that he didn't have any
22 problems with Mr. Aboelseud, that he didn't even file a
23 report.

24 THE COURT: That seems to be fairly consistent with-
25 -with the testimony here, that once they asked him to leave,

1 he left. Or is there some dispute about that?

2 MS. BERNARDS-GOODMAN: No.

3 THE COURT: Well, I--I'll be happy to hear any
4 evidence you want me to hear, but it seems to me that at this
5 point, they're not going to change what the record says about
6 what the evidence is on that occasion.

7 MR. PRICE: Yeah, and I would simply, with respect
8 to the bailiff, what I--either by proffer or with just one or
9 two quick questions, get into evidence the fact that he did
10 not file a report on the incident because he thought it was so
11 inconsequential. (Inaudible)

12 MS. BERNARDS-GOODMAN: Well, your Honor, there's
13 going to be a dispute on that, because I've got a report.

14 THE COURT: All right. Well, then, you will be able
15 to call him if you'd like. I don't think you need to keep Ms.
16 Ward on the hook, unless there's something you want her to
17 testify to that we haven't heard about.

18 MS. BERNARDS-GOODMAN: No.

19 THE COURT: Okay.

20 MS. BERNARDS-GOODMAN: But before I close my case, I
21 would like to move for admission of the protective order
22 documents.

23 THE COURT: Any objection to admission of those
24 documents?

25 MR. PRICE: No objection.

1 THE COURT: Okay. Were you going to have--have Ms.
2 Marelius also present as a possible witness, or is that your
3 witness also, Mr. Price?

4 MR. PRICE: No. She is a prosecution witness.

5 THE COURT: Was she going to testify today?

6 MS. BERNARDS-GOODMAN: Well, she was going to
7 corroborate the fact that she's represented the defendant all
8 this time and that she's been available for contact.

9 THE COURT: Okay. Do you have any dispute with
10 that--those facts?

11 MS. BERNARDS-GOODMAN: Excuse me. The victim.

12 MR. PRICE: No, I don't have a dispute with those
13 facts. My understanding from at least the prosecution was
14 that they thought she might have some testimony as to what she
15 may or may not have said to Mr. Aboelseud. I don't know if
16 the prosecution--with respect to who to contact. I don't know
17 if the prosecution intends to--to be said or not.

18 THE COURT: Well, first of all, State's Exhibits 1
19 through 4 will be admitted into evidence.

20 Who was this?

21 All right. Well, you use your judgment as to what
22 you--what additional evidence you'd like to present, Ms.
23 Bernards-Goodman.

24 MS. BERNARDS-GOODMAN: Pardon? Your Honor, I didn't
25 hear.

1 THE COURT: I've admitted these documents.

2 MS. BERNARDS-GOODMAN: Okay.

3 THE COURT: Did you wish to call an additional
4 witness? I'm not--I don't want to tell you how to try your
5 case.

6 MS. BERNARDS-GOODMAN: Well, your Honor, I can
7 certainly leave these other two witnesses for rebuttal--

8 THE COURT: Okay.

9 MS. BERNARDS-GOODMAN: --if it becomes necessary.

10 THE COURT: So the State rests then?

11 MS. BERNARDS-GOODMAN: Yes.

12 THE COURT: Mr. Price?

13 MR. PRICE: At this point, we'd call Mr. Aboelseud,
14 your Honor.

15 THE COURT: Okay. Mr. Aboelseud, we'll have you
16 step up and be sworn in.

17 ABDELAZIZ ABOELSEUD,

18 the defendant in this matter, called as a witness, after
19 having been first duly sworn, was examined and testified in
20 his own behalf as follows:

21 DIRECT EXAMINATION

22 BY MR. PRICE:

23 Q Will you state your name for the record, please?

24 A My name is Abdelaziz Mohammed Aboelseud.

25 Could you give me two minutes to calm down, please?

1 Thank you.

2 Q Mr. Aboelseud, you were aware of the mutual
3 protective order that's at issue this morning; is that
4 correct?

5 A Yes.

6 Q And after that protective order was entered by the
7 Court, did you ever place any phone calls to a phone located
8 at 1137 Goodwin Circle?

9 A Yes.

10 Q And why did you make those--any phone calls to that
11 address?

12 A To ask Mr. Garcia, which is the father of my ex-
13 girlfriend, to ask Ms. Stephanie, which is my ex-girlfriend,
14 to go take the blood test so we can solve the problem.

15 Q With respect to any of those phone calls, did you
16 have any intent or desire to speak directly with Ms. Garcia?

17 A I have no desire at all to speak with Garcia; all
18 what I want is just to get her--to ask Mr. Garcia or Mrs.
19 Garcia to tell their daughter to take the blood test after we
20 tried.

21 Q So, when you telephoned the number at 1137 Goodwin
22 Circle, it was your intent and purpose to speak with Mr. or
23 Mrs. Garcia and not to the defendant, Garcia; is that correct?

24 A That's correct, yes.

25 MR. PRICE: I have nothing further.

1 THE COURT: Ms. Bernards-Goodman?

2 CROSS-EXAMINATION

3 BY MS. BERNARDS-GOODMAN:

4 Q Were you aware that Stephana Garcia lived at that
5 address also, with her parents?

6 A Yes.

7 Q And were you ever calling during the day?

8 A Yes.

9 Q Were you aware that her parents work?

10 A I know that they work in the restaurant which is
11 only a half a block and they have no regular hours where to
12 go.

13 Q But you're aware they work?

14 A They could be--they could be at home.

15 Q And you know where they work?

16 A Yeah, I know where they work.

17 Q Were you aware that Stephana Garcia had an attorney?

18 A Yes. I am aware.

19 Q Have you contacted her in the past?

20 A Several times, yes.

21 Q When you came to Court in October--

22 MR. PRICE: At this point, your Honor, I'm going to
23 object to any questions concerning the October 17th Court date
24 as being beyond the scope of direct.

25 THE COURT: And I will sustain that objection. I

1 don't believe he's waived his privilege with respect to that
2 subject matter.

3 MS. BERNARDS-GOODMAN: No further questions then.

4 THE COURT: Mr. Price?

5 REDIRECT EXAMINATION

6 BY MR. PRICE:

7 Q Just to follow up real quickly. The prosecutor
8 asked you if you've ever spoken with Ms. Garcia's attorney;
9 have you spoken with, in fact, Ms. Garcia's attorney, is that
10 correct?

11 A Yes, I did.

12 Q In the past?

13 A Yes. I spoke with Mrs. Garcia's attorney.

14 Q You've spoken with her many times?

15 A Yes. Several times.

16 Q Has she ever indicated to you that she had a
17 difficult time speaking with--communicating with her client?

18 MS. BERNARDS-GOODMAN: Objection--

19 THE WITNESS: Yes. Yes, she did.

20 MS. BERNARDS-GOODMAN: --hearsay.

21 THE WITNESS: She told me several times--

22 THE COURT: Just a moment. I will overrule the
23 objection because it may be relevant for purposes other than
24 the truth of the matter asserted.

25 Anything else? Thank you. You may step down then.

1 You can go ahead and step down, Mr. Aboelseud.

2 MR. PRICE: And at this point, we would rest.

3 THE COURT: Any rebuttal?

4 MR. PRICE: I'm just going to let the bailiff know
5 he can leave.

6 MS. BERNARDS-GOODMAN: No.

7 THE COURT: Okay.

8 The defense--or the State is not going to call
9 rebuttal, so both parties have rested.

10 Did you wish to make argument?

11 MS. BERNARDS-GOODMAN: Yes, briefly, your Honor.

12 The State has shown beyond a reasonable doubt to the
13 Court that a valid protective order was in effect during the
14 month of October.

15 That protective order, as we discussed earlier, was
16 sought by the defendant. It prohibits the defendant was
17 seeking out contact with Stephana Garcia. Yet, despite that,
18 the defendant shows up in Court on--and ends up being escorted
19 out.

20 The defendant also continues to make contact with
21 Ms. Garcia by phone, despite the fact that there are other
22 ways to contact her; she has an attorney he can contact her
23 through; she has parents who work, who he is aware of and has,
24 by his own admission, spoken to before, that he could contact.
25 There is no reason for him to be calling her and seeking out

1 contact.

2 This is in direct violation of the order.

3 THE COURT: Mr. Price?

4 MR. PRICE: Just briefly, your Honor.

5 As the defendant himself testified, he was trying to
6 get ahold of her parents to have them convey a message to
7 Stephana. Under any reading of the protective order, I don't
8 think that violates the terms of the protective order.

9 There's certainly--certainly has been no evidence of
10 any intent to harass Ms. Garcia, no evidence of any intent to
11 place her in any sort of fear or anything like that, simply an
12 intent to get ahold of her parents to arrange blood tests.

13 With respect to his appearance at the Court date,
14 Mr. Aboelseud was the victim. I think he is entitled to
15 appear at that kind of a proceeding, especially when any plea
16 bargaining might be taking place, and--and I think he'd be
17 privileged to attend that kind of a proceeding.

18 THE COURT: Do you want to have your victim in here
19 and your other witnesses, Ms. Ward, anybody in the courtroom
20 before we continue? Probably a good idea, since I'm sure
21 they're interested in the outcome.

22 Okay. We've heard argument. Is there anything
23 else? Responsive argument, Ms. Bernards-Goodman?

24 MS. BERNARDS-GOODMAN: Your Honor, just briefly, now
25 I can't remember what I said on the first one.

1 This protective order was sought, it was made mutual
2 because our victim today, Stephana Garcia, doesn't want to
3 have contact with the defendant. She is upset and afraid when
4 she has contact with him.

5 He knew he's not supposed to seek out contact with
6 her, yet, he shows up at a Court hearing where he doesn't need
7 to be and he continues to call her on the phone when he
8 doesn't need to make contact with her.

9 I think this shows direct violation of the
10 protective order.

11 THE COURT: The language of the protective order
12 that we're looking at is the blanket language in which each
13 party is restrained from any contact whatsoever with the other
14 party. That's very broad--pardon me--very broad language.

15 The question is, I think, in each of the cases,
16 whether the conduct alleged and--and shown by the State,
17 really, there's no dispute as to the facts of what happened;
18 the question is whether that constitutes making contact with
19 the defend--with the victim in this case, within the meaning
20 of the terms of the protective order and within a clear enough
21 meaning of the terms of the protective order that the
22 defendant could be reasonably on notice that he would be
23 violating that, by doing what he did.

24 I do not believe that attending a public hearing in
25 which the other party is present and not otherwise making any

1 contact whatsoever, other than to turn around and look and see
2 if she's there, contact--constitutes a violation of an order
3 not to make contact.

4 I think a fair reading of the order is if he came,
5 he sure couldn't go up and talk to her, he couldn't probably
6 make gestures at her or pass notes to her or glare at her in
7 an attempt to do anything to intimidate her or anything like
8 that; but showing up at a hearing, at this point, would be
9 Constitutionally protected and even in October, is something
10 that I think that Mr. Aboelseud had a right to do, so long as
11 he was on his best behavior, which he evidently was, and then
12 complied with the request to leave.

13 So, in many circumstances, I would certainly prefer
14 that both parties to a situation like this not be present in
15 the courtroom, but the fact of the matter is, it's an open
16 proceeding, he's an interested party and has a right to--to be
17 aware of what goes on in Court, so long as he doesn't
18 otherwise violate the protective order by directly making
19 contact.

20 So, I will not find the defendant guilty of the
21 first count.

22 With respect to the second count, there's no
23 evidence in connection with that charge of any sort of abusive
24 or threatening behavior; however, I think that the conduct of
25 the defendant clearly falls within the meaning of the no

1 contact provision.

2 He calls a place where he knows that the defendant
3 (sic) lives on at least one occasion, when the phone is
4 answered, he asks in a questioning voice, "Stephana?" As if,
5 "Are you there?" Or "Is that who's answering the phone?"
6 Clearly has reason to know that the--that Ms. Garcia is as
7 likely as anybody to pick up the phone, and perhaps the most
8 likely during this time of the day.

9 There may have been a reason for it, but there are
10 other ways of accomplishing that purpose. I don't think that
11 those reasons justify making the contact.

12 Therefore, Mr. Aboelseud, I will find you guilty of
13 the second count of violating the protective order.

14 Did you wish me to consider the sentence on this
15 today?

16 MR. PRICE: Yes, your Honor.

17 THE COURT: I understand the circumstances and the
18 facts in connection with the case, so you don't need to
19 restate those for me. Would you like to--you should, and your
20 client should stand at the lectern at this point--like to
21 address me regarding sentencing issues? Anything I ought to
22 be aware of?

23 MR. PRICE: Yes, beyond the facts of the case, your
24 Honor, we would simply indicate that the--the facts of the
25 case certainly, I don't think, justify any jail sentence being

1 imposed, certainly not time being served.

2 As your Honor indicated, there simply was no
3 evidence of any, you know, harassing conduct or anything like
4 that, and perhaps--although, what we have, I think, it looks
5 like, you know, this may be a technical violation of the
6 order, but nothing that really justifies throwing the guy in
7 jail, certainly. I--I don't think this is the kind of conduct
8 that would warrant that.

9 There's no question that there's been some bad blood
10 between the parties. Both of them have entered guilty pleas
11 at one time or another with respect to charges involving the
12 other person; but I don't think--again, with respect to what
13 we have here, it's--it's not the type of conduct that--that
14 rises to the level of imposing any kind of jail sentence, I
15 don't believe, your Honor.

16 Mr. Aboelseud indicates that his only--his only
17 desire, really, all the way along has been to try to get to
18 see his children and that's been the motivating factor of any
19 phone calls, anything like that. It's a constant struggle
20 today for that to occur, but that's really been, you know, his
21 desire and has been all the way along. And we'd ask the Court
22 to take that into consideration.

23 THE COURT: Has the issue of paternity been finally
24 resolved on the children?

25 MR. PRICE: The blood test has come back positive

1 with respect--there's a--

2 THE COURT: No Court order?

3 MR. PRICE: Mr. Aboelseud--pardon?

4 THE COURT: There's no Court order to paternity?

5 MR. PRICE: No Court order. I had been, at one
6 point going to be representing Mr. Aboelseud in that
7 proceeding. I ended up having to withdraw for reasons
8 unrelated to that proceeding.

9 Mr. Aboelseud has filed a pro se motion for summary
10 judgment that's pending in that proceeding.

11 THE COURT: Ms. Bernards-Goodman, would you like to
12 say anything on behalf of the State in connection with
13 sentencing?

14 MS. BERNARDS-GOODMAN: Yes, your Honor. I would
15 like the Court to be aware of the defendant's record and I
16 understand from speaking to the City--if I could approach--
17 that this does not reflect what the Court would find if it
18 looked it up on the computer. I think there's--

19 THE COURT: Has Mr. Price seen this?

20 MR. PRICE: I'm not sure if I've seen what it is
21 she's said, your Honor.

22 THE COURT: Okay. May 29th. Let me just read
23 through it, May 29th, arrest for domestic violence, assault,
24 and there's disposition is dismissed. That was of 1994.

25 December 20th of 1994, subsequent to this offense,

1 arrest for violation of protective order, so that would be
2 this charge, I guess?

3 MR. PRICE: Yes.

4 THE COURT: And that's it. Is that right?

5 MS. BERNARDS-GOODMAN: There's--I'm sorry, there's
6 more City stuff, which we did have in our file as I went
7 through.

8 Some of this may be duplicative of what we have.

9 THE COURT: Okay. There's a charge from--I can't
10 tell the offense date, of domestic violence, adjudicated
11 before Judge Hutchings by way of, I guess a guilty plea.

12 MR. PRICE: I think the one with Judge Hutchings, if
13 I'm not mistaken, is one Mr. Aboelseud was found not guilty.
14 That was one that was related to the charge that had been
15 filed against Ms. Garcia, that she entered a guilty plea to.

16 MS. BERNARDS-GOODMAN: Your Honor, she didn't enter
17 a guilty plea.

18 MR. PRICE: Or entered some sort of a plea; but he
19 was found innocent on the charges against him.

20 THE COURT: I thought she said she did plead guilty.

21 MS. BERNARDS-GOODMAN: She said she pled it out; she
22 has an abeyance on a no contest.

23 THE COURT: Well, that's a guilty plea.

24 MS. BERNARDS-GOODMAN: Well, in my experience, when
25 I offer that, it's--

1 THE COURT: Well, what--I don't understand. This
2 one with--oh, this is a different case.

3 MR. PRICE: Yes.

4 THE COURT: I'm having trouble reading this. Who
5 printed these out, these are--the May 31st--this is a mess.
6 Maybe somebody can tell me what you show on the City docket as
7 the charges.

8 UNIDENTIFIED SPEAKER: Your Honor, what I had
9 indicated to Ms. Bernards-Goodman about the information I had
10 was that this morning, when I attempted to find the files that
11 related to these two parties, I put Mr. Aboelseud's name in
12 the computer and the Circuit Court computer with a name
13 search, and I came up with two pages of cases with his name.
14 Now, some of those may be civil and some of those may be bail,
15 but I believe there are a number of other criminal charges
16 that are City Court cases and adjudicated in this Court that
17 are not appearing on the City rap sheet or in those two; but I
18 know at least the two, there's the May 31st violation and the
19 September 1st violation that you have, and I believe there are
20 actually more.

21 MR. PRICE: I know there are a variety of traffic
22 violations that show up on the computer system. As far as I'm
23 aware, the only one that has any sort of any--a guilty plea or
24 anything like a negative disposition to it with respect to Mr.
25 Aboelseud, was the one indicated in front of you there, where

1 he entered a guilty plea. I think the rest are traffic-
2 related matters.

3 THE COURT: The--okay. Anything else the State
4 wants me to consider?

5 Would Ms. Garcia or Ms. Marelius like to address me
6 with respect to anything in connection with sentencing, or the
7 victim here. Ms. Garcia?

8 MS. GARCIA: I'd just like him to leave me alone.

9 THE COURT: You'd like a no contact order?

10 MS. GARCIA: I'd like--yeah.

11 THE COURT: Okay.

12 MS. GARCIA: Something that--and if he bothers--
13 'cause he's starting to bother me at work again.

14 THE COURT: Yeah. Is there--is there--

15 MS. GARCIA: And because there's no protective order
16 and so he thinks, well, I'm going to go ahead and do what I
17 want to do but--

18 THE COURT: Is there an arrangement made now for
19 visitation--

20 MS. GARCIA: There is.

21 THE COURT: --on a regular basis?

22 MS. GARCIA: There is arrangement made. He doesn't
23 have to contact me at all. He can send a letter or call the
24 attorney; you know, I'm paying for the attorney to be--to be
25 there, so that I don't have to deal with him any more.

1 THE COURT: Ms. Marelius?

2 MS. MARELIUS: I'd be glad to speak to that, your
3 Honor. We have an arrangement that's been in place since, I
4 think February 1st, so at least two months, and I think the
5 parties have adhered to it very well, for a one day per week
6 supervised visitation that's taking place with both children
7 and that Ms. Garcia is not present at all, her--one of her
8 parents is the supervisor, and I think that's going--that's
9 gone well.

10 The only other thing I might be able to add is Mr.
11 Garcia--Mr. Aboelseud was pro se for the majority of this. He
12 had an attorney for a short time during the civil action and
13 now he's pro se again.

14 He's extremely insistent. He--it takes numerous
15 communications from me by letter or by call to get a point
16 made to him. I think, for whatever reason, he chooses not to
17 believe what I tell him, and I think that the Court should
18 take that into account when it comes to enforcing the
19 protective order here.

20 We've had a series of problems and I think at this
21 point, the Court has to be very firm.

22 THE COURT: Uh huh. Well, obviously, if you're
23 going to be involved in this matter, that's sort of part of
24 the price that you're going to have to take with the bargain.

25 MS. MARELIUS: That's true.

1 THE COURT: Dealing with opposing counsel or
2 opposing parties. Some people are easier to get along with, I
3 guess, than others, is the simplest way of saying it. That,--
4 I am not going to restrict Mr. Aboelseud's ability to contact
5 you in connection with that litigation. I don't see how that
6 would be something I could or should do, although I sincerely
7 hope, Mr. Aboelseud, that you do not and will not abuse your
8 right to contact Ms. Garcia's counsel for matters necessary to
9 resolution of the paternity action and the visitation issues
10 that need to be addressed.

11 Mr. Price?

12 MR. PRICE: If I could just make some brief comment
13 with respect to the visitation that's currently in place. I'm
14 somewhat familiar with that, because I was involved in setting
15 that up. There was representation made to the Court that it's
16 been working rather well, that's simply not accurate.

17 There's been some visitation occurring. The
18 agreement that was made by Ms. Garcia with respect to the
19 visitation, it was a supervised visitation that occurs at her
20 parents' restaurant. The agreement was that the grandmother
21 was the supervisor. They would allow Mr. Aboelseud to take
22 the children from the restaurant--and I know that a lot of
23 this is neither here nor there for this proceeding--but that's
24 simply not occurring. The agreement's been breached time
25 after time. I just want--don't want any misinformation here.

1 THE COURT: Well, there--there may be some problems
2 with the visitation that don't amount to any sort of ongoing
3 conflict between Mr. Aboelseud--I mean direct conflict between
4 Mr. Aboelseud and Ms. Garcia. Those things need to be
5 resolved either by clarifying what the agreement is, or
6 obtaining a Court order or enforcing an order if one's in
7 place.

8 And with at least one able counsel and perhaps sort
9 of two, and I guess, I don't know if you're really not able to
10 represent or help Mr. Aboelseud at all in that; that should
11 not be anything that's difficult to have happen.

12 But I am--I think it's appropriate and necessary for
13 there to be an ongoing order of no contact, and as a condition
14 of sentence, I will impose a no contact order, and the reason
15 I asked about the visitation is because that's usually a
16 sticking point, where there, at least are parents that can be
17 a go-between, that helps somewhat. A lot of times, you have
18 parties that are--really don't have anybody else that they can
19 both accept as a--as a pick-up, drop-off point or supervisor,
20 if it's supervised visitation.

21 I am not going to try to determine what visitation
22 should be. That's up to the parties or it's up to the
23 District Court to determine in connection with a paternity
24 action.

25 Was there anything else you wanted me to consider

1 before I impose sentence?

2 MR. PRICE: No, your Honor.

3 THE COURT: Sentence I will impose on the one charge
4 on which I found you guilty, Mr. Aboelseud, is one year
5 suspended jail sentence, suspending it on the condition that
6 for the next 36 months, you not violate the law.

7 You are not, during that time, to have any contact
8 with Stephana Garcia. You may contact her counsel for matters
9 relative to the paternity action, to make sure that's
10 resolved, including determination of visitation.

11 I would prefer to see you have counsel in that
12 matter, but to the extent that you're representing yourself,
13 you--there is some necessary contact and you certainly may do
14 that. I will indicate that if I am approached with an
15 allegation that you are abusing that, as an indirect way of
16 abusing or of getting around the no contact order, I would
17 consider extending the limitation to include some restriction
18 on your ability to contact Ms. Marelius; but at this point, I
19 don't think it's appropriate to do that.

20 I'm just telling you, you need to be reasonable in
21 the way you go about communicating with her and I'm not trying
22 to determine what is and what is not, because it's either
23 hypothetical or it's disputed; but--but understand that there
24 are limits to which you can expect her to spend time with you
25 on the phone or respond to--to immediate demands. And so,

1 just understand that.

2 The no contact order does, however, mean you are not
3 to call the Garcia home. If you need to contact the
4 grandparents in order to deal with a visitation issue, then
5 you may call them, and I'm talking about talking about the
6 time when you'll be there or if there's going to be a conflict
7 and you won't be able to be there, or something along those
8 lines, for that limited purpose, you may call them there.

9 You are not, however, to engage in any harassing
10 conduct. So, again, you may not abuse that as a way of--of
11 communicating or getting around the no contact order with
12 Stephana. If you have to schedule a visit, then you call them
13 and say, I need to schedule a visit, this is when I want to
14 come. If there are any questions or any issues, if--if
15 there's a question about what the agreement is or whether it's
16 being complied with, then it needs to be addressed, either by
17 clarifying the order or the agreement or going into the
18 District Court and getting an order.

19 It's very important that you follow this, okay?

20 There may be times when you're going to be required
21 to just be a little bit patient and work through those things,
22 but do not get impatient and feel that somehow that will
23 justify--if you're not getting something accomplished that you
24 want, disregarding my orders; because believe me, I will
25 enforce those orders with jail, if I need to.

1 You may not, as I indicated, call the Garcia home.
2 You may not write letters to Stephana Garcia. If you should
3 find yourself in a public place in which she is present,
4 you're--and I think you understand this already--you're not to
5 speak with her, go up to her, gesture to her, pass her notes,
6 make threatening, facial gestures, anything like that. Again,
7 I think you understand that already. You didn't do that, as I
8 understand it, at your last Court date.

9
10
11 (End of tape - tape containing remainder of hearing
12 not available for transcription at this time.)

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C E R T I F I C A T E

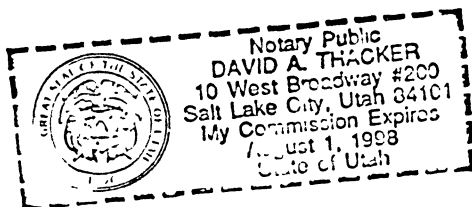
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the Trial in the case of the State of Utah, plaintiff, vs. Abdelaziz Aboelseud, defendant, was electronically recorded by the Third Circuit Court, State of Utah, Salt Lake County.

That the said witnesses were, before examination
duly sworn to testify the truth, the whole truth, and nothing
but the truth in said cause.

That the said testimony of said witnesses was electronically recorded and thereafter caused by me to be transcribed into typewriting, and that a true and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages numbered from 1 to 64, inclusive, and said witnesses testified and said as in the foregoing annexed testimony.

WITNESS MY HAND and official seal at Salt Lake City,
Utah, this 28th day of August, 1995.



DAVID A. THACKER

My commission expires: